

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7630

Petition of Northern New England Energy)
Corporation, as agent for Valener, Inc., pursuant)
to 30 V.S.A. § 107, for Approval of an Indirect)
Transfer of Control of Vermont Gas Systems,)
Inc., and Green Mountain Power Corporation to)
Newco, a newly-formed Corporation)
consolidating limited-partnership interests in)
Gaz Metro Limited Partnership)

Order entered: 8/26/2010

**ORDER RE INDIRECT ACQUISITION OF CONTROLLING INTEREST IN
VERMONT GAS SYSTEMS, INC. AND GREEN MOUNTAIN POWER CORPORATION
UNDER 30 V.S.A. § 107**

I. INTRODUCTION

Northern New England Energy Corporation ("NNEEC"), as agent for a newly formed Canadian corporation which has since been identified as Valener Inc. ("Valener"), filed a petition with the Public Service Board ("Board") on June 22, 2010, seeking Board approval under 30 V.S.A. § 107 of a proposed indirect acquisition by Valener of a controlling interest in Vermont Gas Systems, Inc. ("VGS"), Green Mountain Power Corporation ("GMP") and three GMP subsidiaries.

NNEEC, a Vermont corporation which owns all the issued and outstanding stock of VGS and GMP, is in turn wholly owned by Gaz Métro Limited Partnership ("GMLP"), a Quebec limited partnership. As detailed in the prefiled testimony and exhibits accompanying the petition, a change in Canadian tax law that otherwise would subject GMLP to taxation after September 30, 2010, has prompted a proposed reorganization of the ownership structure of GMLP to ensure that all partnership interests in GMLP are owned by taxable Canadian corporations.

Under this restructuring of GMLP's ownership, limited partnership units in GMLP now owned directly by public investors will be exchanged by these investors for shares of stock in Valener. As a result, the ownership of "public, previously-dispersed limited-partnership interests in GMLP" will be consolidated under the ownership of Valener, which will own approximately 29% of the limited partnership units of GMLP. Both before and after the proposed restructuring, the remaining 71% limited partnership interest in GMLP will be owned, directly or indirectly, by Gaz Métro Inc ("GMi"), a Quebec corporation, which also serves as the general partner of GMLP. The upstream ownership of GMi will not be affected by the proposed restructuring, although Valener will obtain the right to designate a number of directors of GMi based on its ownership interest in GMLP.

The Department of Public Service ("Department") made a filing on July 16, 2010, in which the Department recommended that the petition be granted and advised the Board that the Department did not believe it necessary to convene a hearing in this matter. The Department noted that the transaction will not affect the capital structure, ongoing business or services of VGS and GMP and observed that the transaction will indirectly benefit VGS, GMP and GMP's subsidiaries by enhancing GMLP's ownership structure and financial condition.

Section 107 of Title 30 requires an opportunity for hearing prior to granting approval of a proposed acquisition of a controlling interest. None of the parties to this proceeding have requested a hearing, and, as discussed below, the Board concludes that a hearing is not necessary as the filings submitted by the parties provide an adequate basis under the circumstances for the requested relief.

II. FINDINGS

Based on the petition, the prefled testimony of Pierre Despars and the accompanying exhibits NNEEC-1, 2, 3, 5 and 6,¹ the Board finds:

1. GMLP is a Québec limited partnership that owns all of the issued and outstanding stock of NNEEC. Despars pf. at 3; Petition at 2.

1. The transaction documents included in Exh. NNEEC-6 to Mr. Despars' testimony were initially designated as allegedly confidential information under a Protective Agreement between NNEEC and the Department, dated June 2, 2010. NNEEC advised the Board in filings on August 11 and 18, 2010, that this exhibit may now be made public and that NNEEC withdraws its motion for a protective order in this docket, which it filed on June 22, 2010.

2. NNEEC is a corporation duly organized and existing under the laws of the State of Vermont and owns all of the issued and outstanding stock of VGS and GMP. Petition at 1.

3. VGS is a Vermont corporation engaged in the transmission, distribution and sale of natural gas within Vermont. *Id.*

4. GMP is a Vermont corporation engaged in the generation, transmission, distribution and sale of electricity within Vermont. *Id.*

5. GMP owns more than 10% of the issued and outstanding equity interests in Vermont Yankee Nuclear Power Corporation, Vermont Electric Power Company, Inc., and Vermont Transco, LLC (together, the "GMP Subsidiaries"). Petition at 2.

6. GMi is a Québec corporation that owns approximately 70.99% (85,510,000 units) and, through its ownership of 100% of Gaz Métro Plus Inc., an additional approximately .01% (8,551 units) of the limited-partner interests of GMLP, with the remaining approximately 29% interest (34,933,663 units) held in the form of limited-partnership units issued to the public in Canada by GMLP. Despars pf. at 3-4; Petition at 2.

7. GMi is also the general partner of GMLP. Exh. NNEEC-5 at 1 and S-1.

8. Noverco Inc. ("Noverco") owns all of the issued and outstanding stock of GMi, and the "upstream" ownership of Noverco will not be affected by the transactions related to the proposed ownership restructuring of GMLP. Despars pf. at 4; Petition at 2.

9. The primary impetus for the proposed restructuring of GMLP's ownership is a change to Canada's Income Tax Act, as GMLP's current ownership structure would subject the partnership to taxation as a "specified investment flow through partnership" ("SIFT partnership") after September 30, 2010. Despars pf. at 2 and 4; Petition at 2.

10. To avoid having GMLP be taxed as a SIFT partnership, a federal Canadian corporation, Valener,² has been formed as a means to reorganize the ownership of GMLP so that all partnership units are owned by taxable Canadian corporations. Despars pf. at 4; Petition at 2.

2. In a letter filed with the Board on August 11, 2010, NNEEC advised the Board that this corporation, which was previously identified in its filings as Newco, was given the name Valener Inc.

11. Under the ownership restructuring plan, owners of the publicly held limited-partnership units will exchange their units in GMLP for shares of Valener, while the limited-partnership units held by GMi will remain unchanged. Despars pf. at 4-5; Petition at 3; exh. NNEEC-5 at § 3.1(q) and at exhibit A § 3.1.

12. Valener will have the right under an amended and restated limited partnership agreement to nominate directors to the Board of Directors of GMi, and have such directors elected by Noverco, based on Valener's pro-rata ownership interest in GMLP as long as Valener holds at least 7.5% of the outstanding GMLP units. Despars pf. at 5; Petition at 3; exh. NNEEC-6 at § 3.14.

13. In addition to ensuring that GMLP will not be taxed as a SIFT partnership, the GMLP ownership restructuring is expected to have other indirect benefits for GMLP and its affiliates by creating Valener as an investment vehicle that will allow for a broader base of investors and facilitate the issuance of debt and equity capital to finance future projects. Despars pf. at 6-7; Petition at 3.

14. The proposed transaction will not have any material effect on the business plans or corporate or financial structure of VGS, GMP or the GMP Subsidiaries, and it will not have any material effect on customer service or service quality. Despars pf. at 7; Petition at 4.

15. NNEEC, VGS, GMP and the GMP Subsidiaries do not plan any changes in these companies' operations as a result of the GMLP ownership restructuring, and these companies will continue to operate as stand-alone companies with Vermont-based management. Despars pf. at 7-8; Petition at 4.

III. DISCUSSION AND CONCLUSIONS

Under 30 V.S.A. § 107, any company seeking to directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the Board, or in any company which directly or indirectly has a controlling interest in such a company, is required to obtain Board approval. "Controlling interest" is defined in 30 V.S.A. § 107(e)(1) as "10 percent or more of the outstanding voting securities of a company" or such other interest as the Board

determines "to constitute the means to direct or cause the direction of the management or policies of a company."

The Petition does not specify whether the limited partnership units in GMLP to be owned by Valener are voting securities as defined in 30 V.S.A. § 107(e)(2), but the Board assumes for purposes of its adjudication of this petition that Valener is acquiring 29% of the voting securities of GMLP.³ Valener will also have the right to designate for election to the Board of Directors of GMLP's general partner, GMi, a number of directors based on the percentage of total units in GMLP it holds.⁴

As a result of the ownership restructuring, Valener may acquire controlling interests in both GMi and GMLP and, thereby, indirect controlling interests in VGS, GMP and the GMP Subsidiaries. Although NNEEC and Valener have not sought to rebut the presumption that Valener's significant 29% ownership interest in GMLP will constitute a controlling interest, the significance of Valener's ownership interest in GMLP and its ability to elect directors to the Board of Directors of GMi must be seen in the context of GMi's much more significant 71% ownership interest in GMLP, Noverco's ownership of GMi and Noverco's apparent ability to elect the majority of GMi's directors.

The Board's conclusion that a hearing in this matter is not required is based in part on the dominant ownership position of GMi in GMLP and Noverco in GMi that will continue after the GMLP ownership restructuring. The Board notes, however, that Valener's indirect interest in GMP and VGS might become more significant from the standpoint of control and influence to the extent that there is a significant decline in the indirect ownership interest of GMi or Noverco. For this reason, this Order contains a requirement that the Board be provided with advance notification of any event that would result in (i) GMi owning less than a majority of the voting partnership units of GMLP, (ii) Noverco owning less than a majority of the voting securities of

3. The Board notes that, under the amended and restated limited partnership agreement, Valener will have the right to vote on resolutions at partnership meetings in proportion to its ownership of units in GMLP. Exh. NNEEC-6 at Articles 1 and 14.

4. The petition states that Valener may indirectly acquire a controlling interest in VGS, GMP and the three GMP Subsidiaries through this right to appoint directors to GMi's board. Petition at 3. The petition does not explicitly state that Valener's acquisition of a 29% ownership interest in GMLP may represent the indirect acquisition of a controlling interest in these companies.

GMi, or (iii) Noverco no longer having the ability or right to elect a majority of the Board of Directors of GMi. In addition, to avoid any uncertainty as to the applicability of 30 V.S.A. § 107 to any additional cumulative acquisition by Valener of ten percent or more of the partnership units of GMLP, this Order requires Valener to seek Board approval for any such future acquisition.

Based on the findings above, and after considering the circumstances and effect of the proposed ownership restructuring, the Board concludes that a sufficient basis exists to support a finding that the proposed acquisition will promote the public good. The proposed ownership restructuring will enable GMLP and its affiliated companies to avoid the unfavorable tax consequences of a change in Canadian tax law. In addition, the ownership restructuring is expected to have other indirect benefits for GMLP and its affiliated companies by establishing Valener as an investment vehicle that will allow for a broader base of investors and facilitate the issuance of debt and equity capital to finance future projects. Accordingly, the Board finds that the proposed indirect acquisition by Valener of a controlling interest in VGS, GMP and the GMP Subsidiaries will promote the public good and grants approval of such acquisition as part of the proposed ownership restructuring of GMLP.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. The indirect acquisition by Valener Inc. of a controlling interest in Vermont Gas Systems, Inc., Green Mountain Power Corporation, Vermont TransCo., LLC, Vermont Electric Power Company, Inc., and Vermont Yankee Nuclear Power Corporation will promote the public good and is approved.
2. Northern New England Energy Corporation ("NNEEC") shall notify the Board within one week after the proposed Gaz Métro Limited Partnership ("GMLP") ownership restructuring is effected.
3. NNEEC, GMPL, tro Inc. ("GMi") or Noverco Inc. shall notify the Board at least two weeks prior to any event that would result in (i) GMi owning less than a majority of the voting

partnership units of GMLP, (ii) Noverco Inc. owning less than a majority of the voting securities of GMi, or (iii) Noverco Inc. no longer having the ability or right to elect a majority of the Board of Directors of GMi. This requirement shall continue for so long as these companies own an indirect controlling interest in any company subject to the jurisdiction of the Public Service Board.

4. Valener Inc. shall file a petition with the Public Service Board seeking the approval of the Board with respect to any future proposed acquisition by it, directly or indirectly, of an additional ten percent or more, on a cumulative basis, of the partnership units of GMLP. This requirement shall continue for so long as GMLP owns an indirect controlling interest in any company subject to the jurisdiction of the Public Service Board.

Dated at Montpelier, Vermont, this 26th day of August, 2010.

<u>s/ James Volz</u>)	
)	
)	
<u>s/ David C. Coen</u>)	PUBLIC SERVICE
)	
)	
)	BOARD
)	
)	
<u>s/ John D. Burke</u>)	OF VERMONT

OFFICE OF THE CLERK

FILED: August 26, 2010

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.